IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

State of Rajasthan. Versus Shri Charanjit Singh.

S.B. Criminal Misc. Petition No. 67/2000

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State of Rajasthan. Versus Niyal Khan.

S.B. Criminal Misc. Petition No. 387/2000

and

Parmeshwar. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 630/2000

...

Date of Order: August 21, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Ashok Upadhyaya, Public Prosecutor for the State.
None present for the contesting private parties.

BY THE COURT:

All these three criminal miscellaneous petitions under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) involve common questions of law and fact, and therefore, they are being heard and decided together taking the facts of S.B. Criminal Miscellaneous Petition No. 67/2000 as the leading case.

I have heard learned Public Prosecutor for the State. No one appears for the contesting private parties despite repeated calls.

A bus bearing No. RJ.19-P-1086 was checked by the Senior District Transport Officer on 18-9-1999 exercising the powers conferred on them under the Rajasthan Motor Vehicles Taxation Act, 1951 (for short, the Taxation Act, 1951" hereinafter). On checking, it was revealed that the said bus had no permit and a sum of Rs.80,000/- was outstanding as special road tax and, therefore, the bus was being plied without paying the special road tax in violation of the provisions of the Taxation Act, 1951. The owner of the said bus, non-petitioner Charanjit Singh, filed an application before the Judicial Magistrate, Churu under Section 457 of the Code seeking release of the vehicle on Supurdginama. The Judicial Magistrate dismissed the application and refused to release the said vehicle on Supurdginama vide order dated 28-9-1999. Non-petitioner Charanjit Singh, the owner of the said vehicle, filed a revision petition before the

Sessions Judge, Churu, which was allowed vide order dated 1.10.1999 by setting aside the order of the Judicial Magistrate and releasing the vehicle on Supurdginama. Aggrieved by the order impugned passed by the Sessions Judge, Churu, the State of Rajasthan has filed the instant criminal miscellaneous petition.

In S.B. Criminal Misc. Petition No. 630/2000, the bus bearing No. RNP 2423 was seized by the District Transport Officer, Nagaur for violation of the provisions of the Act, 1951 by not paying the due tax. The owner of the vehicle Parmeshwar filed an application before the Additional Chief Judicial Magistrate, Merta, seeking release of the vehicle. The Additional Chief Judicial Magistrate, Merta dismissed the application on the ground that the Court has no jurisdiction to release the vehicle in the cases where the vehicle is seized for non-payment of tax, keeping in view the provisions of Section 16 of the Taxation Act, 1951, which creates a bar on civil and criminal courts in the matters of taxation. That order came to be challenged by Parmeshwar before the Sessions Judge, Merta (for short, "the Revisional Court) and the Revisional Court dismissed the revision petition and affirmed the order of the Additional Chief Judicial Magistrate, Merta dated 1-8-2000.

In all these three matters, the respective vehicles were seized by the District Transport Authorities for plying the vehicles in violation of the provisions of the Taxation Act, 1951

by not paying the due tax, may be special road tax, permit etc. Section 16 of the Taxation Act, 1951 creates a bar to the jurisdiction of the civil and criminal courts in the matter of taxation and provides that the liability of a person to pay the tax shall not be questioned or determined otherwise than as provided in this Act or in rules made thereunder and no prosecution, suit or other proceeding shall lie against any officer of the State Government for any thing in good faith done or intended to be done under this Act.

Section 17 of the Taxation Act, 1951 provides that any police officer in uniform not below such rank, as may be prescribed and any officer of the Transport Department not below the rank of a Sub-Inspector and any officer of the Commercial Taxation Department not below the rank of an Inspector posted at the check posts controlled by the Commercial Taxes Department, may require the driver of any motor vehicle in any public place to stop the vehicle and cause it to remain stationary so long as may reasonably be necessary for the purpose of satisfying himself that the amount of tax due in accordance with the provisions of this Act in respect of such vehicle has been paid. Sub-section (2) of Section 17 provides that where any tax due in respect of such vehicle has not been paid, any officer referred to in sub-section (1), may seize and detain such vehicle and take or cause to be taken such steps as

he may consider necessary for the safe custody of the vehicle until it is produced before the Taxation Officer of the area concerned within a reasonable time or the tax due in respect of the vehicle is paid; provided that where the vehicle so seized is a non-transport vehicle, such officer may release the vehicle after obtaining a bond for a sum not exceeding Rs.500/- from the driver or the owner or any person having possession or control of the vehicle, as the case may be, for depositing the tax within the period specified in the bond, provided further that the provisions of sub-section (2) shall not apply to non-transsport vehicles registered in Rajasthan. Sub-section (3) of Section 17 provides that the transport vehicle seized under sub-section (2) shall not be released unless full tax due in respect of such a vehicle has been paid. Sub-section (4) of Section 17 provides that where the vehicle has been seized or detained under sub-section (2), the owner or person incharge of the motor vehicle may apply to the Taxation Officer or any officer authorised by the State Government together with the relevant documents for the released of such vehicle and such officer shall, after the verification of the documents and on being satisfied that no tax, penalty and interest is due, by an order, release the vehicle.

Thus, from the perusal of the provisions of Section 16 of the Taxation Act, 1951, it is clear that no Court, civil or criminal, has jurisdiction to deal with the matter where the

liability of a person to pay tax under the provisions of the Taxation Act, 1951 is involved.

On the similar facts, a petition filed by the State of Rajasthan came to be disposed of by this Court, being S.B. Criminal Misc. Petition No. 68/2000, vide order dated 21-4-2005 by holding that the vehicle was seized by the Taxation Authorities for violation of lTaxation Act, 1951 and it was held that it is not possible to claim the possession of the vehicle by the owner under Section 457 of the Code. The jurisdiction to release the vehicles rests with the taxation authorities because it was not under the provisions of the Code and that vehicle was seized under the Rajasthan Motor Vehicles Taxation Act, 1951. There was a clear bar in the jurisdiction of the Civil and Criminal Court. Setting aside the order passed by the Additional Sessions Judge, Churu, this Court released the vehicle and cancelling the Supurdginama by which the vehicle was released, a direction was issued to the respondents, the vehicle owner, to surrender the vehicle before the taxation authority.

This Court, in S.B. Criminal Misc. Petition No. 904/2002, the District Transport Officer Vs. Uday Singh decided on 24-3-2004; S.B. Criminal Misc. Petition No. 576/2000, State of Rajasthan Vs. Bhanwar Lal decided on 28-7-2004; and S.B. Criminal Misc. Petition No. 630/2003, Mangi Lal Vs. State of Rajasthan decided on 20-11-2003, held that it is settled by

various decisions of this Court that criminal Courts will have no jurisdiction to grant or refuse custody of the vehicle if it has been seized for non-payment of the tax.

From a bare reading of the plain language of Sections 16 and 17 of the Taxation Act, 1951, it is more than clear that a bar has been created by the statute i.e. the Taxation Act, 1951, to take away the jurisdiction of the civil and criminal Court to deal with the matters involving the question of determination of tax payable under the Taxation Act, 1951. A detailed procedure has been provided under Section 17 of the Taxation Act, as noticed above, where the vehicle is seized in violation of the provisions of the Taxation Act, 1951, including release of the vehicle by the Taxation Authorities. There is absolutely no provisions under the Code, by which the question of determination of tax and non-payment of tax can be decided. In the circumstances, when there is no such provision under the Code, by which the criminal court can determine the question of tax payable under the Taxation Act, 1951 then exercising the power by the criminal court to release the vehicle under Section 451 or 457 of the Code is beyond jurisdiction of the criminal court, keeping in view the bar created by Section 16 of the Taxation Act, 1951. In the circumstances, therefore, the order dated 1-10-1999 in Criminal Misc. Petition No. 67/2000 passed by the Sessions Judge, Churu and the order dated 17-5-2000 in

S.B. Criminal Misc. Petition No. 387/2000 passed by the Chief Judicial Magistrate, Jodhpur, cannot be sustained and are liable to be set aside. The order impugned dated 1-8-2000 in S.B. Criminal Misc. Petition No. 630/2000 passed by the Additional Chief Judicial Magistrate, Nagaur and affirmed by the Sessions Judge, Merta, call for no interference.

In the result, S.B. Criminal Miscellaneous Petitions No. 67/2000 and 387/2000 are allowed. The impugned order dated 1-10-99 passed by the Sessions Judge, Churu in Criminal Revision Petition No. 118/1999 and the impugned order dated 17-5-2000 passed by the Chief Judicial Magistrate, Jodhpur in Criminal Misc. Application No. 5251/2000, are set aside. The Supurdginama in both these criminal miscellaneous petitions stand cancelled and the non-petitioners in both these criminal miscellaneous petitions are directed to surrender the vehicles before the Taxation Authorities forthwith. S.B. Criminal Misc. Petition No. 630/2000 stands dismissed.

(H.R. PANWAR), J.

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